

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #11	CCRB Case #: 201903484	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/19/2019 8:40 AM	Location of Incident: § 87(2)(b)	Precinct: 63	18 Mo. SOL 9/19/2020	EO SOL 5/6/2021	
Date/Time CV Reported Tue, 04/23/2019 1:18 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Tue, 04/23/2019 1:18 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Calixte	00863	946815	063 PCT
2. POM Timi Tomacruz	02303	947545	063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Meenawatti Ciccone	26925	945396	063 PCT
2. POF Dina Soliman	20634	959260	063 PCT
3. POF Shaneka Howard	20560	940276	063 PCT
4. POM Mahmoud Mohamed	04492	965801	063 PCT
5. POF Jennifer Rorke	13796	957430	063 PCT
6. SGT John Lane	01536	944103	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Calixte	Abuse: Police Officer Daniel Calixte stopped § 87(2)(b)	§ 87(2)(b)
B.POM Daniel Calixte	Force: Police Officer Daniel Calixte used a chokehold against § 87(2)(b)	§ 87(2)(b)
C.POM Daniel Calixte	Force: Police Officer Daniel Calixte used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Daniel Calixte	Abuse: Police Officer Daniel Calixte frisked § 87(2)(b)	§ 87(2)(b)
E.POM Timi Tomacruz	Abuse: Police Officer Timi Tomacruz searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)

### Case Summary

On April 23, 2019, a letter in which § 87(2)(b) filed this complaint was received at the CCRB.

On March 19, 2019, at approximately 8:40 a.m., § 87(2)(b) and a friend he could only identify as § 87(2)(b) sat in § 87(2)(b)'s parked vehicle in the vicinity of § 87(2)(b) § 87(2)(b) in Brooklyn. PO Daniel Calixte of the 63<sup>rd</sup> Precinct responded to a 911 call regarding the possible presence of a firearm in § 87(2)(b)'s vehicle, approached it, and spoke with § 87(2)(b) (**Allegation A -Abuse of Authority: Stop,** § 87(2)(g)). PO Calixte opened the door to § 87(2)(b)'s vehicle, used a chokehold against him (**Allegation B -Force: Chokehold,** § 87(2)(g)), and pulled him outside the vehicle (**Allegation C -Force: Physical force,** § 87(2)(g)). After removing § 87(2)(b) from the vehicle, PO Calixte frisked him (**Allegation D -Abuse of Authority: Frisk,** § 87(2)(g)). PO Timi Tomacruz of the 63<sup>rd</sup> Precinct searched § 87(2)(b)'s vehicle (**Allegation E -Abuse of Authority: Vehicle search,** § 87(2)(g)).

Neither § 87(2)(b) nor his friend was arrested or issued any summonses as a result of this incident.

Video footage obtained in this case was recorded by various officers from the 63<sup>rd</sup> Precinct on their respective Body-Worn Cameras (BWCs).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Daniel Calixte stopped** § 87(2)(b)

**Allegation (B) Force: Police Officer Daniel Calixte used a chokehold against** § 87(2)(b)

**Allegation (C) Force: Police Officer Daniel Calixte used physical force against** § 87(2)(b)

**Allegation (D) Abuse of Authority: Police Officer Daniel Calixte frisked** § 87(2)(b)

It is undisputed that PO Calixte stopped and frisked § 87(2)(b) a black male who had been in his black Infiniti vehicle with another male at the time of this incident.

§ 87(2)(b) stated (Board Review 01) that PO Calixte opened the unlocked front driver side door of his vehicle, grabbed hold of his left wrist, pulled it towards the vehicle's exterior, and grabbed hold of the front of his neck near his throat with his thumb on one side of it and four fingers on its other side. § 87(2)(b) instructed PO Calixte to remove his hand from § 87(2)(b)'s neck. PO Calixte did so, grabbed hold of § 87(2)(b)'s left wrist, pulled him towards the vehicle's exterior, and attempted to grab hold of his right wrist. § 87(2)(b) who did not have his safety belt fastened, stood to his feet, exited the vehicle, and closed the front driver side door.

PO Calixte stated (Board Review 02) that he received a radio call from central dispatch regarding a possible crime involving two males in a black Infiniti vehicle with a firearm and in front of § 87(2)(b) § 87(2)(b) in Brooklyn. Descriptions of the males, which PO Calixte could not recall, were also provided. No information regarding the complainant who called 911 was provided. PO Calixte stated to the CCRB that 911 calls that are anonymous and not anonymous are handled differently in that anonymous calls cannot be verified and that officers first go to the location of the complaint with the available information to determine what is occurring.

PO Calixte went to the location, where he saw two males inside a black Infiniti vehicle. Because the males and their vehicle were consistent with the description of two males in a black Infiniti vehicle provided in the call regarding a firearm and for no other reason, PO Calixte approached the vehicle and spoke, through the open front driver side door window, with § 87(2)(b). PO Calixte requested that § 87(2)(b) exit the vehicle, which he refused to do. § 87(2)(b) had a verbally "combative" demeanor in that he refused to identify himself or otherwise comply with PO Calixte. § 87(2)(b) reached towards his side a number of times PO Calixte did not recall. Neither § 87(2)(b)'s actions nor any observations PO Calixte made of the interior of

the vehicle added to any suspicion that PO Calixte had of § 87(2)(b) PO Calixte responded to § 87(2)(b)'s reaching motion by informing that he must exit the vehicle.

PO Calixte opened the front driver side door of the vehicle. PO Calixte did not recall whether he made any physical contact with § 87(2)(b) and “might have” reached into the vehicle. PO Calixte did not recall making any contact with § 87(2)(b)'s neck or throat and did not think that he had done so. § 87(2)(b) exited the vehicle, which PO Calixte did not recall occurring as the result of his removing § 87(2)(b) from the vehicle or § 87(2)(b) exiting the vehicle by his own power.

After § 87(2)(b) exited the vehicle, he reached his right hand “several” times towards its front driver side door in what PO Calixte thought was an attempt to close or lock it. § 87(2)(b) successfully locked the door. § 87(2)(b)'s motion and the nature of the complaint relating to a firearm raised PO Calixte's suspicion that he “had something” or was “trying to reach for something.” While § 87(2)(b) was outside the vehicle, PO Calixte saw nothing on his body suggesting that he might be carrying a firearm. Because PO Calixte had received a report regarding a firearm and for no other reason, PO Calixte frisked § 87(2)(b) on his waist and no other part of his body.

PO Calixte stated that the “furtive movements” he noted in Stop, Question, and Frisk Report number § 87(2)(b) (Board Review 03) referred to the reaching motions § 87(2)(b) made inside and outside his vehicle and no other movements.

The 911 tape of the call in this incident (Board Review 14), which was placed at approximately 8:40 a.m., consists of an unidentified male reporting that in front of § 87(2)(b) § 87(2)(b), two black males, one wearing a grey shirt and one wearing a black sweater or jacket, had a black gun and were inside a black Infiniti vehicle with a § 87(2)(b) license plate.

In an 18-second portion of BWC footage that PO Calixte recorded (Board Review 04), he instructs § 87(2)(b) “Come out” twelve times, holds and pulls § 87(2)(b)'s left arm with his right hand, presses his left hand against his torso, grasps § 87(2)(b)'s throat with his left hand for less than one second, removes this hand from his throat, immediately grasps his throat again for over one second, and then presses this hand against his chest. § 87(2)(b) exits the vehicle, and PO Calixte presses him against it. During this portion of footage, § 87(2)(b) is visible outside the vehicle wearing a grey garment on his torso, and § 87(2)(b) is visible inside the vehicle wearing a dark-colored garment on his torso.

In a 17-second portion of BWC footage that PO Tomacruz recorded (Board Review 05), PO Tomacruz speaks with Sgt. Lane and explains the circumstances of the incident. Sgt. Lane informs PO Tomacruz, “You have to remember. It's anonymous unverified.” PO Tomacruz's BWC footage (Board Review 19) indicates that he and PO Calixte arrived at the incident location at approximately 8:42 a.m.

§ 87(2)(b)'s driver's license (Board Review 16), which was valid at the time of this incident, was issued to him in § 87(2)(b). The license plate on § 87(2)(b)'s vehicle (Board Review 17) has an appearance consistent with the current standard license plate issued in Pennsylvania in that it contains a thin, dark-colored top section, white center section, and thin, light-colored bottom section (Board Review 18).

Although an anonymous source furnishing a general description and location of a “man with a gun” does not constitute reasonable suspicion to stop and frisk someone, details supplied by the informant which are personal in nature and, even when not suggestive of criminal activity, so specific and congruous with circumstances encountered by officers provide officers with information whose reliability can reasonably be assume. Accordingly, a unique physical description of an individual with a gun and specific placement of the individual at the reported location will justify a stop and frisk. People v. Olsen, 93 A.D.2d 824 (1983) (Board Review 06).

Members-of-service shall not use a chokehold. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe which may prevent or hinder breathing or reduce intake of air. NYPD Patrol Guide, Procedure 221-01 (Board Review 07).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Timi Tomacruz searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated to the CCRB that while he was outside his vehicle, either PO Calixte or PO Tomacruz opened the front driver side door of § 87(2)(b)'s vehicle and said that he would search the vehicle. This officer leaned into the vehicle and placed his upper body, from his head to the top of his shoulders, inside it for less than one minute. § 87(2)(b) told the officer that he had no warrant to search the vehicle, and the officer exited the vehicle and closed its front driver side door.

PO Tomacruz acknowledged (Board Review 08) that he inspected plainly visible portions of the interior of § 87(2)(b)'s vehicle, including its floor, seats, door interior, and seat undersides, through an open door. PO Tomacruz did not recall his body position during this process or what portions, if any, of his body he inserted into the vehicle.

Portions of BWC footage depict the first (Board Review 09) and second (Board Review 10) instances of PO Tomacruz approaching the open front driver side door of § 87(2)(b)'s vehicle. Based on the universe of officers' BWC footage from the incident, these are the only moments between § 87(2)(b) exiting and re-entering his vehicle during which an officer approaches this or any other open door.

This footage, reflecting both PO Tomacruz's first-person view and a third-person perspective recorded by another officer, depicts, in the first file, PO Tomacruz stepping to the open door, bending his torso such that his BWC captures the vehicle interior, where no part of PO Tomacruz's body can be seen entering the vehicle prior to his standing upright. In the second file, PO Tomacruz and § 87(2)(b) speak about whether PO Tomacruz may search his vehicle. After § 87(2)(b) tells PO Tomacruz that he may not do so, he leans his left arm downwards and towards the door interior. After this, the door window lowers.

The BWC footage PO Calixte recorded (Board Review 15) depicts the aspects of this incident during which the front driver side door of § 87(2)(b)'s vehicle is open, and for the entirety of this period, PO Calixte interacts with § 87(2)(b) outside the vehicle and does not approach the open door or otherwise enter the vehicle.

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) [Redacted] has been a party (Board Review 11).
- PO Calixte has been a member-of-service for eleven years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) [Redacted]  
[Redacted]
- PO Tomacruz has been a member-of-service for eleven years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g) [Redacted]  
[Redacted]

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- On July 23, 2019, a Notice of Claim inquiry was sent to the New York City Office of the Comptroller, and the results will be added to the case file upon receipt (Board Review 12).
- § 87(2)(b) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted] (Board Review 13).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date

